

**IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH 'B' : NEW DELHI)**

**BEFORE SHRI R.K. PANDA, ACCOUNTANT MEMBER
and
SHRI KULDIP SINGH, JUDICIAL MEMBER**

**ITA No.332/Del./2017
(ASSESSMENT YEAR : 2003-04)**

M/s. Dimension Capbuild P. Ltd., vs. ITO, Ward 7 (3),
B – 65/3, Naraina Industrial Area, New Delhi.
Phase – II, New Delhi – 110 028.

(PAN : AAACD4046J)

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : Shri Manoj K. Gupta, CA
REVENUE BY : Ms. Ashima Neb, Senior DR

Date of Hearing : 18.07.2019

Date of Order : 25.07.2019

ORDER

PER KULDIP SINGH, JUDICIAL MEMBER :

Appellant, M/s. Dimension Capbuild P. Ltd. (hereinafter referred to as the 'assessee') by filing the present appeal sought to set aside the impugned order dated 01.11.2016 passed by the Commissioner of Income - tax (Appeals)-3, New Delhi affirming the penalty order dated 30.03.2015 passed u/s 271(1)(c) of the Income-tax Act, 1961 (for short 'the Act'), qua the assessment year 2003-04 on the grounds inter alia that :-

“

.”

2. Briefly stated the facts necessary for adjudication of the issue at hand are : On the basis of assessment framed under section 143(3) of the Income-tax Act, 1961 (for short ‘the Act’) making addition of Rs.35,50,000/- on account of income from undisclosed sources, Assessing Officer (AO) initiated the penalty proceedings by way of issuing of notice under section 271(1)(c) read with section 274 of the Act. Quantum addition has been confirmed by the Id. CIT (A). Declining the contentions raised by the assessee, AO proceeded to levy the penalty of Rs.15,08,968/- @ 100% on the total concealed income of Rs.41,06,037/- on the ground of furnishing inaccurate particulars of income to evade tax.

3. Assessee carried the matter by way of an appeal before the Id. CIT (A) who has confirmed the penalty by dismissing the appeal. Feeling aggrieved, the assessee has come up before the Tribunal by way of filing the present appeal.

4. We have heard the Id. Authorized Representatives of the parties to the appeal, gone through the documents relied upon and orders passed by the revenue authorities below in the light of the facts and circumstances of the case.

5. At the very outset, Id. AR for the assessee brought to the notice of the Bench that assessment order dated 27.12.2010 framed

under section 143(3)/147 of the Act on the basis of which penalty proceedings under section 271(1)(c) were initiated, has since been set aside by the *coordinate Bench of the Tribunal vide order dated 25.10.2016 passed in ITA No.1900/Del/2014*. This actual position has not been controverted by the Id. DR for the Revenue. For ready perusal, operative part of the aforesaid order passed by the coordinate Bench of the Tribunal is extracted as under :-

“11. We have carefully considered the rival contentions. The assessee could not produce the books of accounts before the Ld. assessing officer and therefore the disallowance has been made by the Ld. assessing officer estimating 20% of the all the expenditure of the assessee including the opening stock as disallowable. The Ld. 1st appellate authority has reduced the above amount by the amount of opening stock, but confirmed the balance disallowance of expenditure. Such disallowances has resulted because the assessee could not produce the books of accounts before the Ld. assessing officer due to the death of one of the key directors. Therefore, assessee is granted one more opportunity to produce the books of accounts of the assessee before the Ld. assessing officer for verification of the above expenditure as estimated disallowance cannot be upheld, When the assessee is ready to produce the books of accounts. In the result ground No.8 of the appeal of the assessee is set aside back to the file of the assessing officer with a direction to the assessee to produce the books of accounts along with all supporting vouchers and bills within three months of this order to satisfy the assessing officer about the genuineness of the claim of expenditure of the assessee. In the result ground No.8 of the appeal of the assessee is allowed accordingly.”

6. In view of the fact that since assessment order on the basis of which penalty has been levied by the AO and confirmed by the Id. CIT (A) is no more in existence having been set aside to the AO to decide afresh, penalty levied is not sustainable. Consequently, this issue is also set aside to the AO to decide afresh in accordance with law only after framing the assessment after providing adequate opportunity of being heard to the assessee. Consequently, appeal filed by the assessee is allowed for statistical purposes

Order pronounced in open court on this 25th day of July, 2019.

**Sd/-
(R.K. PANDA)
ACCOUNTANT MEMBER**

**sd/-
(KULDIP SINGH)
JUDICIAL MEMBER**

**Dated the 25th day of July, 2019
TS**

Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT(A)-3, New Delhi.
- 5.CIT(ITAT), New Delhi.

**AR, ITAT
NEW DELHI.**